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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
BOX TTAB, FEE

In the matter of Trademark Application Serial No. 76/213,541
For the mark: PCTI
Filed on: February 21, 2001
Published in the Official Gazette on July 2, 2002

U.S. Patent & TMO/TM Mail Rcpt. Dt. #57
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2002 AUG -9 AM 12:25
TRADEMARK TRIAL AND
APPEAL BOARD

PCT INTERNATIONAL, INC.
Opposer

v.

PHOTON CONTROL TECHNOLOGIES, INC.
Applicant

Opposition No. _____

NOTICE OF OPPOSITION

PCT International, Inc. (referred to herein as "Opposer"), a Nevada corporation with its principal place of business located at 1715 West Sunrise Boulevard, Suite A, Gilbert Arizona 85233, believes that it will be damaged by registration of the mark shown in Serial No. 76/213,541 and hereby opposes such application on the following grounds:

1. An application for the mark PCTI, Serial No. 76/213,541 (referred to herein as the "Opposed Application") was filed on an intent-to-use basis on February 21, 2001 with respect to "fiber optic couplers, components, systems, and subsystems" by Photon Control Technologies, Inc. (referred to herein as "Applicant"), a Michigan corporation with a business address of 17632 Rancho de Carole Road, Ramona, California 92065.

08/08/2002 EPINA1 00000018 76213541

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2. The examining attorney assigned to the Opposed Application issued an Office Action dated June 22, 2001 noting a potential conflict with respect to Opposer's pending application, Serial No, 75/685,472 (referred to herein as the "Cited Application") for the mark PCT International (plus design) with respect to "electronic products for the telecommunications industry, namely, coaxial cable connectors and adapters, community antenna television (CATV) splitters and taps; CATV distribution amplifiers; fiber optic transmitters and receivers; and satellite splitters, taps, and multi-switches."

3. The Cited Application was filed by Opposer's predecessor-in-interest, Phoenix Communication Technologies-International, Inc., on May 13, 1999.

4. Effective as of July 31, 2000, all rights in the Cited Application and in the mark reflected in that application, together with all goodwill relating thereto, were assigned to Opposer pursuant to a corporate reorganization under which Opposer acquired substantially all assets of Phoenix Communication Technologies-International, Inc.

5. Instruments reflecting the assignment of the Cited Application to Opposer were recorded in the U.S. Patent and Trademark Office assignment division on April 5, 2001 at Reel/Frame 002274/0588.

6. On December 4, 2001, the Cited Application was registered in the U.S. Patent and Trademark Office on the Principal Register.

7. Applicant responded to the above-referenced Office Action issued on June 22, 2001 with respect to the Opposed Application by filing a Response on December 26, 2001 amending the identification of goods on the Opposed Application to read as follows: "passive fiber optic components for use in fiber amplifiers, wavelength division multiplexor applications, test equipment applications, and passive optical networks". Applicant argued in its Response

that there is not a likelihood of confusion between the Opposed Application and the Cited Application on the grounds that the goods described in the amended identification of the Opposed Application are allegedly sold in different channels of trade than the goods described in the Cited Application.

8. The Opposed Application was approved for publication on March 29, 2002 without further comment by the examining attorney and was published on July 2, 2002.

9. Opposer is the owner of U.S. Trademark Registration No. 2,513,799, which is on the Principal Register, for the mark PCT International (plus design) with respect to "electronic products for the telecommunications industry, namely, coaxial cable connectors and adapters, community antenna television (CATV) splitters and taps; CATV distribution amplifiers; fiber optic transmitters and receivers; and satellite splitters, taps, and multi-switches." The application based on which this registration issued was filed by Opposer's predecessor-in-interest, Phoenix Communication Technologies-International, Inc., on May 13, 1999 as described above.

10. As reflected in the prosecution history with respect to Registration No. 2,513,799, the date of Opposer's first use in commerce with respect to the mark reflected in this registration in connection with the goods described therein is at least as early as May of 1999.

11. Opposer is the owner of U.S. Trademark Registration No. 2,592,772, which is on the Principal Register, for the mark PCT (plus design) with respect to "electronic products for the telecommunications industry, namely, coaxial cable connectors and adapters, community antenna television (CATV) splitters and taps; CATV distribution amplifiers; fiber optic transmitters and receivers; and satellite splitters, taps, and multi-switches." The application based on which this registration issued was filed by Opposer on October 20, 2000.

12. As reflected in the prosecution history with respect to Registration No. 2,592,772, the date of Opposer's first use in commerce with respect to the mark reflected in this registration in connection with the goods described therein is at least as early as May of 1999.

13. Opposer is the owner of U.S. Trademark Application Serial No. 76/151,187 for the mark PCT International with respect to "electronic products for the telecommunications industry, namely, coaxial cable connectors and adapters, community antenna television (CATV) splitters and taps; CATV distribution amplifiers; fiber optic transmitters and receivers; and satellite splitters, taps, and multi-switches." This application was filed by Opposer on October 20, 2000. This application was allowed for registration on April 19, 2002 and will register in due course.

14. As reflected in the prosecution history with respect to Application Serial No. 76/151,187, the date of Opposer's first use in commerce with respect to the mark reflected in this application in connection with the goods described therein is at least as early as March of 1994.

15. Opposer is the owner of U.S. Trademark Application Serial No. 76/151,188 for the mark PCT with respect to "electronic products for the telecommunications industry, namely, coaxial cable connectors and adapters, community antenna television (CATV) splitters and taps; CATV distribution amplifiers; fiber optic transmitters and receivers; and satellite splitters, taps, and multi-switches." This application was filed by Opposer on October 20, 2000. This application was allowed for registration on July 22, 2002 and will register in due course.

16. As reflected in the prosecution history with respect to Application Serial No. 76/151,188, the date of Opposer's first use in commerce with respect to the mark reflected in

this application in connection with the goods described therein is at least as early as March of 1994.

17. The registrations described above as owned by Opposer are valid and subsisting and the applications described above as owned by Opposer are on record and pending.

18. Opposer has continuously used its PCT International and PCT marks in commerce in connection with the goods described in the registrations and applications to which those marks relate since the dates of first use set forth above until the present.

19. Opposer's has promoted and sold the goods described above under its PCT International and PCT marks throughout the United States and the world.

20. As described above and reflected in the prosecution history of the registrations and applications set forth above, Opposer's federal filing date for its PCT International mark is May 13, 1999 and Opposer's federal filing date for its PCT mark is October 20, 2000.

21. As described above and reflected in the prosecution history of the registrations and applications set forth above, Opposer's date of first use in commerce with respect to its PCT International and PCT marks in connection with the goods described in the registrations and applications to which those marks relate is at least as early as March of 1994.

22. Opposer's federal filing date with respect to its PCT International and PCT marks as set forth above precedes the filing date of the Opposed Application.

23. Opposer's date of first use with respect to its PCT International and PCT marks as set forth above precedes the filing date for the Opposed Application.

24. Opposer's federal filing date with respect to its PCT International and PCT marks as set forth above precedes the earliest first use date that Applicant may rely on.

25. Opposer's date of first use with respect to its PCT International and PCT marks as set forth above precedes the earliest first use date that Applicant may rely on.

26. Opposer has priority over the Opposed Application by virtue of its federal filing dates with respect to its registrations and applications for its PCT International and PCT marks.

27. Opposer has priority over the Opposed Application by virtue of its first use dates with respect to its PCT International and PCT marks.

28. The mark in the Opposed Application, when used on or in connection with the goods identified in the Opposed Application, so resembles Opposer's PCT International and PCT marks as to be likely to cause confusion, mistake or deception.

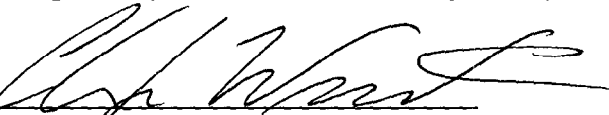
29. For the foregoing reasons, the granting of a certificate of registration to Applicant with respect to the Opposed Application would damage Opposer.

WHEREFORE, Opposer prays that application Serial No. 76/213,541 be rejected and that registration of the mark therein be denied, and for such other relief as may be deemed just and proper.

A check in the amount of \$300 as the filing fee for this Notice of Opposition in one class is submitted herewith.

Opposer requests that all correspondence regarding this opposition be directed to Opposer's counsel identified below at the address identified below.

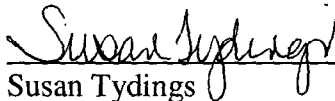
The foregoing Notice of Opposition is hereby respectfully submitted this 31st day of July, 2002.

By 
Christopher A. Womack
GAMMAGE & BURNHAM, P.L.C.
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Attorneys for Opposer

CERTIFICATE OF MAILING BY EXPRESS MAIL

I HEREBY CERTIFY that the original plus one copy of this Notice of Opposition opposing application Serial No. 76/213,541 for the mark PCTI, along with the required filing fee, is being deposited with the United States Postal Service as Express Mail ("Express Mail Post Office to Addressee" service) on the date indicated below, in an Express Mail envelope with sufficient postage and addressed as follows:

Box TTAB
FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513.


Susan Tydings

Date: July 31, 2002

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